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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISIONLUTHER L. THOMAS, Clerk  
By: *F. Kinney* Deputy Clerk

DIGITAL ENVOY, INC. )

Plaintiff )

vs. )

GOOGLE, INC. )

Defendant )

CIVIL ACTION NO.  
1:04-CV-0864 (CAP)**PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF  
ITS MOTION FOR EXPEDITED DISCOVERY**

Google has essentially stolen Digital Envoy's technology by using it, without authorization or compensation, to place geographically targeted advertising on third party websites, which has accounted for hundreds of millions of dollars in revenue to Google. Digital Envoy seeks to determine whether history will be repeated with Google's recent announcement of a massive e-mail service known as Gmail. To make matters worse, Gmail has been met with extreme negative reaction worldwide because of its intrusion on privacy, and Digital Envoy has legitimate business reasons not to be tainted by association with Gmail, since advancing respect for privacy is at the core of Digital Envoy's business model.

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Digital Envoy is extremely concerned about the potential use of its technology in Google's Gmail program. Google's response to Digital Envoy's motion for expedited discovery does not satisfy those concerns and, in fact, raises new concerns. Digital Envoy requests the Court to authorize the commencement of general discovery in this action, including immediate discovery pertaining to the Gmail program.

***I. Digital Envoy's choice of venue is no justification to delay any discovery***

Google first argues that this Court should not rule on this motion because of Google's later filed motion to dismiss or transfer. However, Digital Envoy is entitled to have its tort claims against Google heard by a Georgia judge and jury, as set forth in Digital Envoy's brief in opposition to Google's motion.

Further, Google's objection to Digital Envoy's choice of forum is not a proper subject of a motion to dismiss, but should only be considered as a motion to transfer. So even if the venue clause applied to Digital Envoy's claims, the matter would be transferred to another federal district court, operating under the same rules of civil procedure, and there is no basis for delaying discovery.

Google obstructed the discovery process through its improper choice to file its venue motion as a Rule 12 motion. Digital Envoy objects to Google's effort to delay discovery, and seeks the Court's intervention and assistance by opening general discovery at this time.

***II. Digital Envoy has a legitimate need for expedited discovery despite Google's claim that it does not use Digital Envoy's technology in Gmail***

Google next submits the declaration of Michael Tsao testifying that Google does not use Digital Envoy's technology in Gmail. Digital Envoy filed its motion because it received no explanation for the inconsistencies in certain of Google's written documentation on Gmail which suggest that Digital Envoy's data is in fact being used. Mr. Tsao, who joined Google a few months ago and more than three years after Google began incorporating Digital Envoy's technology in all of its programs, does not explain the contrary documentation in his declaration. Accordingly, the denial of use by him does not satisfy, but in fact underscores, Digital Envoy's legitimate need for expedited discovery.

As set forth in Digital Envoy's brief in support of this motion, Google announced that Gmail uses "the same automated process used to place relevant AdWords ads alongside web pages and newsletters," Digital

Envoy's Brief, Exhibit A. Google admits this process includes use of Digital Envoy's technology. Google's Brief at 3 – 5. Mr. Tsao does not explain this inconsistency such that discovery is necessary to either obtain such explanation or determine that Mr. Tsao is in fact mistaken.

Google also announced that the advertisements on Gmail will only apply “to English language ads targeted to ‘U.S.’, ‘Canada’, or ‘All Regions.’” Digital Envoy's Brief, Exhibit A. Thus, geo-targeted ads are the only advertisements that are even used in Gmail, which is not explained by Mr. Tsao, such that discovery is necessary to either obtain such explanation or determine that Mr. Tsao is mistaken.

Google further announced that AdWords customers will not have to do anything to have their ads automatically selected and placed in Gmail messages, which suggests that current geographically targeted ads will be used in Gmail. Digital Envoy's Brief, Exhibit B. Mr. Tsao does not explain this discrepancy, such that discovery is necessary to obtain such explanation or determine that Mr. Tsao is mistaken.

Finally, Google applied for a patent which includes the use of Digital Envoy's technology in serving advertisements in e-mail messages. Digital Envoy's Brief, Exhibit C. Mr. Tsao does not explain this discrepancy, such

that discovery is necessary to either obtain such explanation or determine that Mr. Tsao is mistaken.

***III. Digital Envoy has a compelling need for expedited discovery***

Google condemns Digital Envoy for contending that Google “may” be using its technology in Gmail and suggesting that it “might” seek an injunction to stop that use. No doubt, though, Google’s protest would be more ardent had Digital Envoy simply sought such an injunction based on the evidence it had already obtained. This, Digital Envoy did not do, but instead it sought complete information from Google. Seen in this light, expedited discovery in aid of this process is not an “extraordinary step” but a conservative one.

Google’s final argument is that Digital Envoy is not under any threat of irreparable harm since Google has been using Digital Envoy’s technology in its contextual ad program for nearly one year without objection<sup>1</sup> and since Digital Envoy can obtain compensatory relief through its claims. Responding to such arguments puts Digital Envoy in the improper position of supporting

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<sup>1</sup> There is no evidence that Digital Envoy has known about Google’s use of its technology on third-party websites for any amount of time, much less one year. And the article attached by Google as Exhibit F to its Response Brief virtually proves Digital Envoy’s point — there is no mention of geographically targeted advertisements or Digital Envoy’s technology.

its injunction motion before it has brought it. In fact, the principal authority relied upon by Google, Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O'Connor, 194 F.R.D. 618, 624 (N.D. Ill. 2000), holds:

[W]here, as here, a plaintiff seeks expedited discovery in order to prepare for a preliminary injunction hearing, it does not make sense to use preliminary injunction analysis factors to determine the propriety of an expedited discovery request. Rather, where a party seeks expedited discovery to prepare for a preliminary injunction hearing, it makes sense to examine the discovery request . . . on the entirety of the record to date and the reasonableness of the request in light of all of the surrounding circumstances . . .

Nevertheless, Google argues that Digital Envoy cannot establish it will suffer irreparable harm because the program is the same as the content advertising program for which Digital Envoy seeks monetary recovery.<sup>2</sup> This is not true.

The prospect of Digital Envoy's technology being misappropriated and incorporated in the Gmail program threatens Digital Envoy with specific irreparable harm. The notion that Gmail is no different than other Google

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<sup>2</sup> Digital Envoy will not respond to Google's implication that there is no irreparable harm associated with Google's improper use of its technology in Google's third party advertising program. Digital Envoy contends otherwise and will prove it when the matter is properly before the court. This motion, though, addresses only discovery associated with Gmail and the unique prospect for irreparable harm specific to the Gmail program set forth herein is more than sufficient to justify this request for expedited discovery.

programs is absurd. In Gmail, Google supplies one gigabyte of storage capacity for each of its users. Instead of a fee for this extraordinary resource, Google requires its customers to accept a significant intrusion on privacy — the e-mails are accessed and read so that advertisements can be added to the message.

As a result of this unprecedented invasion of privacy, the announcement of Gmail was met with widespread negative reaction. *See* collection of articles attached hereto as Exhibit A.

By contrast, Digital Envoy's technology is specifically designed to balance privacy and commercial concerns, which is a core aspect of its business plan. Geographic intelligence provides no access to personal information about the user. In fact, Digital Envoy's technology confers privacy benefits by making it possible for users to immediately access relevant content without having to disclose any personal information, which is disruptive to the users experience and far more obtrusive than use of Digital Envoy's technology.

Thus, Digital Envoy will suffer more than just compensable economic harm if its product becomes associated with Gmail. Given the juxtaposition between the privacy invasion of Gmail and the balance of privacy concerns

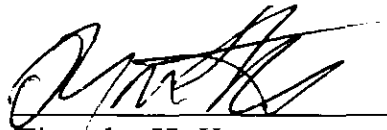
with Digital Envoy's technology, the loss of Digital Envoy's good will if tainted by a connection to Gmail is immeasurable and cannot be compensated through damages. The analogous case of trademark infringement demonstrates that the injury complained of by Digital Envoy is irreparable. *See McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1310 (11<sup>th</sup> Cir. 1998) (where there is substantial likelihood of confusion, irreparable harm is present due to loss of over the reputation of the mark).



***IV. Conclusion***

For the foregoing reasons, in light of all of the surrounding circumstances, Digital Envoy's request for expedited discovery is reasonable and good cause is shown such that Digital Envoy respectfully request that its motion be GRANTED.

Respectfully submitted this 3<sup>rd</sup> day of May, 2004.

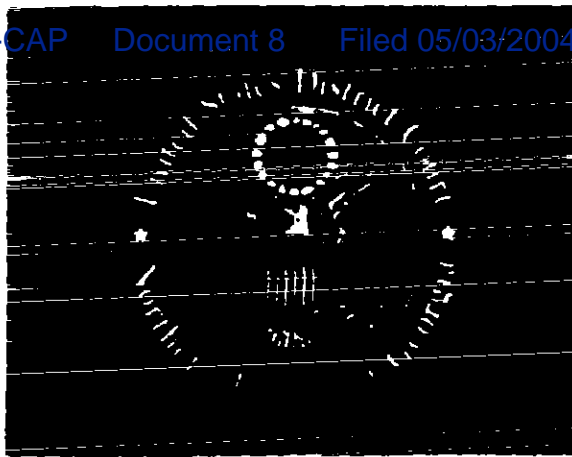


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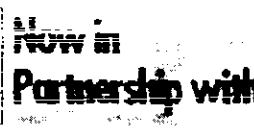
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Digital Envoy, Inc.



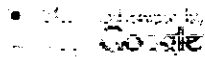
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## Google's E-Mail Strategy Criticized

■ New Gmail service scans messages and attaches targeted ads to them, raising privacy fears.

By Chris Gaither, Times Staff Writer

Privacy advocates are concerned that there's one big flaw with Google Inc.'s free e-mail service: The company plans to read the messages.

The Internet search firm insists that it needs to know what's in the e-mails that pass through its system — so that they can be sprinkled with advertisements Google thinks are relevant. After all, revenue from those targeted ads will pay for the Gmail service, which began a limited test Thursday, offering up to 500 times as much e-mail storage as competing Web e-mail programs from Yahoo Inc. and Microsoft Corp.

The electronic letters won't be read by Google employees; computers will handle that chore. Nonetheless, the specter of seeing an ad for an antacid beside a message from a friend complaining about stomach pain is enough to make some people nervous about the e-mail service.

"There will undoubtedly be some folks that will see this and freak out," said Ray Everett-Church, chief privacy officer for TurnTide Inc., an anti-spam company in Conshohocken, Pa. The aggressive advertising strategy may put a damper on Google's biggest move yet away from its core business of Internet search. After reading the privacy policy on the Gmail website Thursday, consumer-rights groups began sending complaints to the privately held Mountain View, Calif., company and preparing to warn users to stay away.

"The privacy implications of going through and perusing a customer's e-mail to display targeted advertising could be the Achilles' heel for Google's services," said Jordana Beebe, the communications director for the Privacy Rights Clearinghouse, an consumer group in San Diego.

The consternation caught Larry Page, Google's co-founder and president of products, off guard.

"I'm very surprised that there are these kinds of questions," he said Thursday.

There are several reasons. For starters, spam-filtering programs routinely scour e-mails for telltale words such as "Viagra," and companies monitor the message traffic of employees on their corporate networks.

In addition, Internet companies already scrutinize Web search terms in order to serve up ads that are related to the topic a user cares about.

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And Google's AdSense program already goes a step further, placing such ads alongside content on websites that come up in search results.

But e-mail is a more personal form of communication, making targeted advertisements feel intrusive, said Chris Hoofnagle, associate director of the Electronic Privacy Information Center in Washington. He likened the Gmail ads to a computerized voice interrupting a phone conversation about a vacation with a pitch for a travel agency.

"This is an expansion in a way that should bother people," Hoofnagle said. "Communications are sacred."

Consumer advocates are also worried about the potential for Google to link Gmail users to their Internet searches.

Google records the numerical Internet addresses of the computers that request each of the Web searches the company performs. But it hasn't had names or other identifying information to link those addresses to specific people and learn who, for example, is searching for "Janet Jackson halftime show."

Once users register for Gmail, Google would be able to make that connection, if it chose to, said Pam Dixon, executive director of the World Privacy Forum in San Diego. And if Google ever compared the two sets of data, she said, "there are some people who would be chilled and embarrassed."

Page wouldn't say whether Google planned to link Gmail users to their Web search queries.

"It might be really useful for us to know that information" to make search results better, he said. "I'd hate to rule anything like that out."

But he insisted that the company would protect user privacy and takes the issue "very, very seriously."

"We want people in the world to be able to trust Google," he said, "and we view that as an important part of our business."

If you want other stories on this topic, search the Archives at [latimes.com/archives](http://latimes.com/archives).

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Friday, Apr. 02, 2004

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### Google's 'Gmail' raises concerns

#### MIXED REACTIONS ON PRIVACY ISSUES

By Michael Bazeley  
Mercury News

Google -- the company whose founders vowed to "do no evil" with their products -- is raising concerns about privacy with a new e-mail service that will include targeted advertising based on scans of private e-mail messages.

Announced Wednesday, the "Gmail" service hasn't even officially launched, but it is already alienating some who are worried that Google will snoop on their private electronic conversations.

Google officials, including co-founder Larry Page, said such concerns are unfounded, noting that company computers, not people, will be analyzing the e-mail messages and matching them to ads in a database. The company posted a privacy policy on its Web site Wednesday night that promises that "No human reads your mail to target ads or other information without your consent."

But many potential customers are not convinced, calling the new program "creepy" and "scary."

"So, not satisfied with indexing all public content, they want to index the private content too and make it searchable?" one unidentified person posted on the WebmasterWorld Web site, geared to Web site operators. "Man, and they wonder why there are conspiracy theories!"

The free Web-based mail service, expected to launch in the coming weeks, is similar to offerings from Yahoo and Microsoft. Like those companies, Google hopes to pay for the service by embedding advertising in messages.

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## Personalized ads

But while Yahoo uses generic banner ads, Google plans to include small text ads that relate directly to the content of e-mail messages.

Google will deliver the ads through its AdSense program, launched a year ago and used widely on Web sites. The service will analyze e-mail content and try to attach ads that are relevant to the messages.

The hope is that the personalized ads, which will appear on the right side of messages, will entice people to click through to advertiser Web sites.

Elizabeth Coen, who works at a Manhattan literary agency and wrote about Gmail on her Weblog, said she is only mildly concerned about the possibility of Google invading her privacy.

“From what I understand, Google will simply be scanning the e-mail for key words related to ads, which runs the risk of wayward/humorous marketing, at the least,” Coen said in an e-mail. “You don’t want to write to your grandma about breast cancer and have it come with an ad for porn. But then, people get a big kick out of Googled stuff, so the ads in themselves may turn into a cultural joke.”

But Chris Hoofnagle, associate director of the Electronic Privacy Information Center, saw nothing funny about the ads.

“It’s an interference into an area where people have enjoyed a great deal of privacy,” Hoofnagle said. “It’s like a telemarketer listening in to your phone call and then trying to sell you something.”

Don Cooper, a Web site operator and technical consultant in New Orleans, said he worries Google will pull information from e-mail messages and create a database of users’ personal information.

“I don’t necessarily believe they will read the e-mails,” said Cooper, who criticized the service on the WebmasterWorld site. “I think they could extract information from them. I think that as this starts to shake out and people realize the more information Google has on them, there will be a backlash.”

## Laws in effect

But other privacy experts said they can’t imagine Google violating the federal Electronic Communications Privacy Act, which explicitly prohibits humans from intercepting and reading e-mail messages, with few exceptions.

“It’s one place where we do have privacy laws that protect us,” said Ari Schwartz, associate director of the Center for Democracy and Technology in Washington, D.C. “If they’re not sharing information, if it’s staying inside, I don’t see a big problem. Just because something is personalized doesn’t mean it’s an invasion of privacy. In fact, in some ways it’s encouraging to know that you could personalize something without invading privacy.”

Page, Google’s president of products, said company employees would “never” read a user’s e-mail, and personal information will not be shared with advertisers. Page likened Google’s analysis of e-mail content to that of spam filters, which have been used for years without raising privacy concerns.

“That’s why I’m a little baffled by this,” Page said. “We take people’s trust in us very seriously. If

we were to violate that trust, that would hurt our business seriously."

Page added that most e-mail messages will be ad-free because their content will not match ads in the Google database.

Contact Michael Bazeley at [mbazeley@miamiherald.com](mailto:mbazeley@miamiherald.com) or (408) 920-5642.



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Monday April 5, 03:55 PM

## Google mail "may violate privacy laws"

**REUTERS**
*By Lucas van Grinsven, European Technology Correspondent*

AMSTERDAM (Reuters) - A new Google email service that stores messages where users cannot delete them may violate Europe's privacy laws, a citizens' group has said after lodging a complaint with UK authorities.

The world's most popular Internet search engine said last week it would offer a free email service, called "Gmail", with one gigabyte of free storage capacity -- more than 100 times that offered by established rivals Yahoo Mail and Microsoft's MSN Hotmail.

But the breakthrough comes at the price of less privacy.

"Residual copies of email may remain on our systems, even after you have deleted them from your mailbox or after the termination of your account," Google's Gmail says in its privacy and terms of use sections.

Google will also scan users' emails in order to paste appropriate advertising into messages. It may also link together "cookies", which contain personal information, from both email and Web use records.

"This is not just 'buyer beware'. Consumers should be aware that there's a vast violation of European law occurring here," said Simon Davies, director of Privacy International, a citizens' group with offices in Britain and the United States.

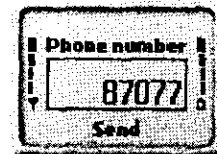
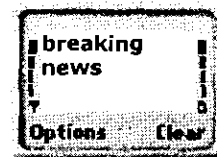
Europe's privacy protection laws are much stricter than those in the United States, where Google is based. European consumers, for example, have the right to retain control over their communications.

"If a person deletes an email, he should be confident that email is actually deleted," said Maurice Westerling, co-founder of Bits of Freedom, another privacy interest group, based in the Netherlands.

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"Besides, Google cannot just open emails. Communication in Europe has a very high degree of protection."

#### THE ROBOT READ MY MAIL

Google said it would not assign people to scan the content of emails, but would automate the task with computers.

"No humans read your email to target the ads," it said on its Web site.

The office of the British Information Commissioner Officer Richard Thomas had no immediate comment on the complaint, filed by Privacy International early on Monday to request an investigation of the new service.

Google, which also faced criticism from U.S.-based privacy groups, could not immediately comment on whether it would adjust the terms of use.

The company has often received high marks from consumer groups for putting users ahead of commercial interests, for instance by limiting advertising and blocking pop-up windows.

Privacy groups said they were also concerned about Google's ability to link a user's personal details, supplied in the Gmail registration process, to Web-surfing behaviour through the use of a single cookie for its search and mail services.

"This linkage provides the most comprehensive understanding to date of a person's life," said Davies, adding governments would be tempted to access that information.

Privacy advocates gave differing views on whether European consumers would be able to waive their rights in order to use the Google service.

"If the consumer is aware of the terms of service, that counts as a private agreement between the two parties. We would not consider it unsolicited communications," said Steve Linford, founder of anti-spam group Spamhaus Project.

Government-backed privacy agencies in Sweden and Germany, however, have blocked commercial services because personal information required in order to sign up would be stored on U.S.-based computers.

"These providers can't just do as they please and hide behind a contract," Privacy International's Davies said.

Gmail's rival services Yahoo Mail and MSN Hotmail, with tens of millions of users worldwide, also have far-reaching user terms, allowing the companies to make use of information put on their Web sites by consumers.

Yahoo explicitly says it will delete any emails or other information after an account is closed



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Omnipotent Google is launching Gmail, an e-mail service with 1 gigabyte of free storage per user. That's so people will never have to delete another e-mail again, spam notwithstanding, I guess. Everything goes into an archive that lets you conduct keyword searches of your old e-mails and attachments. In addition, when Gmail displays an e-mail, it will automatically show all the replies to that e-mail as well, so users can view a message in the context of a conversation.

Sounds great, right? The catch is that Gmail also will display Web search and paid listings next to your incoming e-mail messages. Google's contextual advertising system will automatically scan your e-mails for frequently used terms in order to serve up relevant ads. So, if you're reading an e-mail that mentions "car," you might get served ads from Honda or Ford. Google is emphasizing heavily that no human eyes will ever look at your e-mail, but yikes! Imagine being a John Kerry supporter and getting ads for George Bush all the time. I'm afraid to think what you'll get served if your e-mails are of, um, let's say, a little more personal nature.

Privacy activists are already raising their concerns. They have a point here. "I think it's crossing a line that shouldn't be crossed. They should just transfer content," Richard M. Smith told Wired News last week. Others said the service might make it easier for law enforcement to conduct surveillance of users. I wouldn't worry much about that though, considering the existence of Echelon, the Defense Department and CIA program that snoops through 3 billion telephone calls, e-mails, Internet downloads and satellite transmissions every day.

The idea of using ads to pay for a free service isn't new. Yahoo and Hotmail already insert text ads into the bottom of account holders' e-mail messages, but those ads are randomly generated and aren't scanning the e-mail for related content. Funny, but for much of the day that Google's announcement came out, people were wondering whether the whole thing was an April Fools' Day joke.

I haven't decided whether this is too creepy or whether I'll be one of the first to sign up for Gmail. You can bet that Microsoft and Yahoo will respond to Google's file storage issue and increase their capacities. One of these days, we'll also see Microsoft's new search technology, codenamed Longhorn, which is supposed to give Google a run for its money. Still, Google's expected initial public offering later this year just keeps getting bigger and bigger, doesn't it?

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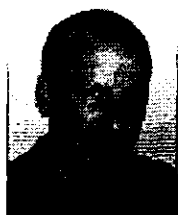
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Insight > Comment > Charles Cooper

Monday 5th April 2004



## Gmail: Look beyond the gigabyte hype

Charles Cooper  
CNET News.com  
April 05, 2004, 15:50 BST



Tell us your opinion!

Massive storage might sound like a good idea, but there is a disturbing price to pay

advertisement

Google's debut of a Web-based email service thrust this most hyped creation of Silicon Valley's venture capitalist community back onto centre stage this week.

On the surface, it sounds like a wow idea. You get one gigabyte of storage and don't pay a copper cent in return. Credit the folks at Google for doing something for the common user. My other Web mail accounts too often reach the maximum storage capacity and shut down until I purge my inbox.

What's more, my hunch is that Microsoft and Yahoo will eventually respond in kind, lest they fall behind Google, which has been the beneficiary of fawning treatment in the press in the run-up to its initial public offering.

But all the praise that is greeting the announcement of "Gmail" distracts attention from the fact that there's yet a hidden price you will still pay, albeit in the form of a different sort of coin.

The Google contextual advertising system automatically scans for frequently used terms in order to serve up ads. This constitutes a neat technology fix for Internet advertisers, who are always seeking to find ways to make their spots more

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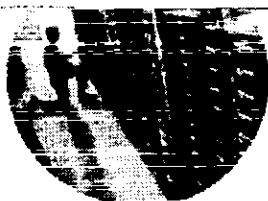
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convincing to Web surfers. For instance, if you email a friend to play tennis this weekend, the system would lock onto the keyword and send you a relevant advertisement from a tennis gear supplier

Sounds like a mind-blower, if you're the marketing director for Wilson Sporting Goods. Truth be told, however, this is the kind of technology advance that gives me the creeps.

Contextual advertising has been around for years. Type "dominatrix" as a search term, and you'll find enough hard-core bondage and fetish ads to keep you occupied for quite some time. But search is one category, your email is quite another. Do you really want Google snooping so close to home? The company says it is not going to read the contents of anyone's inbox. Still, you don't need to be a privacy extremist to realise that this fundamentally remains a bad idea.

So, why is Google taking such a risk? In a word: Microsoft.

The folks in Redmond have been slow to get to market with a good search technology. Windows XP has a search function, but Microsoft expects to debut a killer search technology with Longhorn, the code name for the next important version of the Windows operating system. Company executives acknowledge that they're late to market, but they also express confidence in their ability to surpass Google's search technology.

Chest-beating? To be sure. But Microsoft, not Google, owns the operating system. That's why Microsoft is talking about letting users do things like search out Windows Media tunes they once played or locate spreadsheet files from years' past. And after getting (rightly) slammed for all its privacy woes, my guess is that Microsoft will be more Catholic than the pope, when it comes to email privacy and search. Besides, what better way to draw an invidious comparison with the competition?

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Google was not first to market with search, but it was better than the rest and ultimately became number one. Microsoft can say the same about Internet browsers, spreadsheets and word processors. The point here: technology tastes do change.

If it becomes a matter of an arms race, a company with a multibillion-dollar research and development budget can afford to take its time. That's why the big thinkers at Google should go back to the drawing board and correct a big mistake, before it's too late.

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## Google Responds to Gmail Privacy Concerns

> > > ClickZ News

By Janis Mara | April 2, 2004

Google's newly announced free e-mail offering has strengthened its position against Yahoo! and MSN. Before it can continue to battle its competition in earnest, however, it's working to quell privacy concerns.

The company's plans to include contextually targeted ads in its Web e-mail client are the cause for the concern, because Google intends to have its technology scan the content of e-mail messages, and target ads accordingly. Now that it's clear the initiative isn't an April Fool's joke, analysts, industry figures and individuals are debating the decision across the Net. Meanwhile a group of privacy advocates are drafting a letter asking Google to clarify its policies.

"The fact that it's machines is irrelevant," said Pam Dixon, executive director of the World Privacy Forum. "Machines are more efficient than humans and far more able to be privacy invasive than humans because they can read so much more.

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"We're concerned that users of Gmail, who must give Google their names to sign up, may have their names correlated with the search terms they type in when searching. This can be done through cookies and IP addresses," Dixon said.

"Google needs to make a commitment to its users to never correlate that information," Dixon said.

Dixon's group is drafting a letter to be sent to Google calling on the Internet giant to clarify its policies with regard to Gmail. Her group has approached other privacy organizations to sign on to the letter and at least one has indicated likely approval.

"It would be an important improvement if Google stated it won't correlate the information," said Chris Hoofnagle, associate director of the Electronic Privacy Information Center. "Google has become a bread-and-butter tool to many people. The erosion of user privacy may lead to harm in the brand name and to individuals discontinuing use."

In response, Google says what's drawing concern is what computers are capable of doing, not what the company does in reality. "We pride ourselves in protecting users' data and holding ourselves to the highest standard," said Wayne Rosing, VP of engineering for Google.

"We do not keep that data in correlated form, it's separated in various ways and we have policies inside the company that do not allow that kind of correlation to happen. We consider any program or programming that correlates user data with user identity to be a violation of trust and we do not do that," said Rosing.

But Rosing stopped short of saying that the company will never correlate the data.

"Then it gets to be an issue of what happens if we have to do something to comply with a legal situation," he said, apparently speaking of criminal cases in which the company might be subpoenaed by law enforcement.

It's worth mentioning that Google already has the power to correlate IP addresses and search queries and clicks -- something Rosing says has never occurred.

"I have been here a long time and I have no knowledge of that kind of situation [correlation] ever happening. It does not happen and every employee of Google knows they cannot do this. We have extensive monitoring of our people," Rosing said.

"We have very strict policies. We do not associate search clicks with a user's name or anything like that. And in certain cases we age data and it disappears from the system to provide enhanced privacy protection," Rosing said.

Rosing also pointed out that when computers filter spam, "they have to look at the e-mail in detail or they can't find the spam. It's nothing extraordinary or new going on here."

Dispelling the worries may largely be a matter of Google's clearly communicating its intentions, and making sure people understand what it's doing, and what it isn't.

"There's a couple of analysts on the Jupiter Research staff who think this is overstepping a line no company should cross," said Joe Laszlo, a senior analyst with the company, which is owned by the parent of this publication. "Others, and I'm in this group, feel that as long as they make it clear what they're doing and the user gets free e-mail and a lot of storage, the cost you pay is the ads adjacent to the e-mails you receive."

Jordana Beebe of the Privacy Rights Clearinghouse, agrees with Laszlo that disclosure is key. "Larger storage capacity and ability to send and receive bigger files may be worth less privacy to some consumers. But they need to know that tradeoff is occurring," she said. Like Dixon and Hoofnagle, Beebe said Google should clarify whether it will combine information on IP addresses and cookies with user names.

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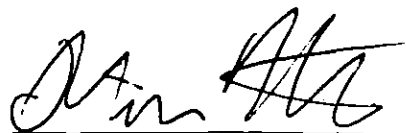
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This 3<sup>rd</sup> day of May, 2004.

A handwritten signature in black ink, appearing to read "Tim Kratz", written over a horizontal line.

Timothy H. Kratz